

REMARKS

Favorable reconsideration of this application as presently amended is respectfully requested. Claims 1 through 9, 11 and 12 are pending. In this Amendment, claim 10 is canceled, claim 1 are amended and claims 11 and 12 are added. No new matter is added.

Support for the amendment to claim 1 is found in the specification at page 2, lines 20 through 22, in claim 5, as well as elsewhere in the originally filed specification, drawings, and claims. Support for new claims 11 and 12 is found in originally filed claims 1, 5 and 10, specification on page 3, lines 27 and 28, and page 4, lines 12 through 18, as well as elsewhere in the originally filed specification, drawings and claims.

The Examiner has indicated that the drawings are objected to under 37 C.F.R. § 1.83(a) for failure to show Figures 9 and 10 as described in the specification on page 9. Applicant has amended the specification to refer to Figures 7 and 8. Support for this amendment is found on page 4, lines 9 through 11. Therefore, the requirement to provide Figures 9 and 10 is rendered moot by the present amendment.

The objection to the specification at page 3, line 29, and page 4, line 12 have been obviated by the above amendments to the specification. The objection to the specification at page 4, lines 11-12 is rendered moot since there is no reference to Figures 9 and 10 in the specification as amended.

The Examiner is thanked for indicating that claims 5 through 9 are allowable.

Applicant notes, with thanks, the Examiner's acknowledgment of the priority claim submitted under 35 U.S.C. § 119.

Claim 10 is rejected under 35 U.S.C. § 112, second paragraph. This rejection is rendered moot by the cancellation of claim 10.

Claims 1 through 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by WO 97/09863 to Carter, *et al.* (Carter). This rejection is respectfully traversed with respect to the claims as currently presented.

Claim 1 as amended includes the feature of “determining whether said electrode is working by comparing said electrode’s value of step (c) with the values of step (c) for each electrode.” As indicated by the Examiner on page 6, claim 5 is novel over the prior for having the step of “determining the relative responsiveness of the electrodes by comparing the values of step (b) for the tested electrodes.” Carter uses a preset threshold for comparing the neural response. Therefore, Carter cannot teach or suggest the features of claim 1 as amended and claim 1 is patentable over Carter.

Claims 2 through 4 depend directly or indirectly from claim 1, and, accordingly, include all of the patentable features of claim 1 as well as other patentable features. Therefore, claims 2 through 4 are patentable over Carter for at least the reasons discussed above with respect to claim 1.

Claims 1 through 4 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,415,815 to Maltan. This rejection is respectfully traversed with respect to the claims as currently presented.

Claim 1 as amended includes the feature of “determining whether said electrode is working by comparing said electrode’s value of step (c) with the values of step (c) for each electrode.” As indicated by the Examiner on page 6, claim 5 is novel over the prior for having the step of “determining the relative responsiveness of the electrodes by comparing the values of step (b) for the tested electrodes.” Maltan does not use a comparative test to adjust the electrodes. Therefore, Maltan cannot teach or suggest the features of claim 1 as amended and claim 1 is patentable over Maltan.

Claims 2 through 4 depend directly or indirectly from claim 1, and, accordingly, include all of the patentable features of claim 1 as well as other patentable features.

Therefore, claims 2 through 4 are patentable over Maltan for at least the reasons discussed above with respect to claim 1.

New claims 11 and 12 both contain the feature of "determining whether said electrode is working by comparing said electrode's value of step (c) with the values of step (c) for each electrode." As discussed above neither Carter and Maltan use a comparative test using the other electrodes. Therefore, claims 11 and 12 are patentable over Carter and Maltan.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance, and favorable action is respectfully solicited.

Respectfully submitted,



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